

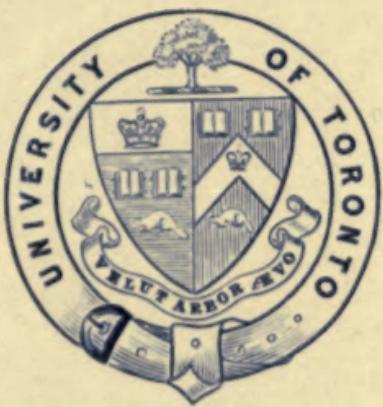
DRAFT CONVENTION
FOR
LEAGUE OF NATIONS

BY
GROUP OF AMERICAN JURISTS
AND PUBLICISTS

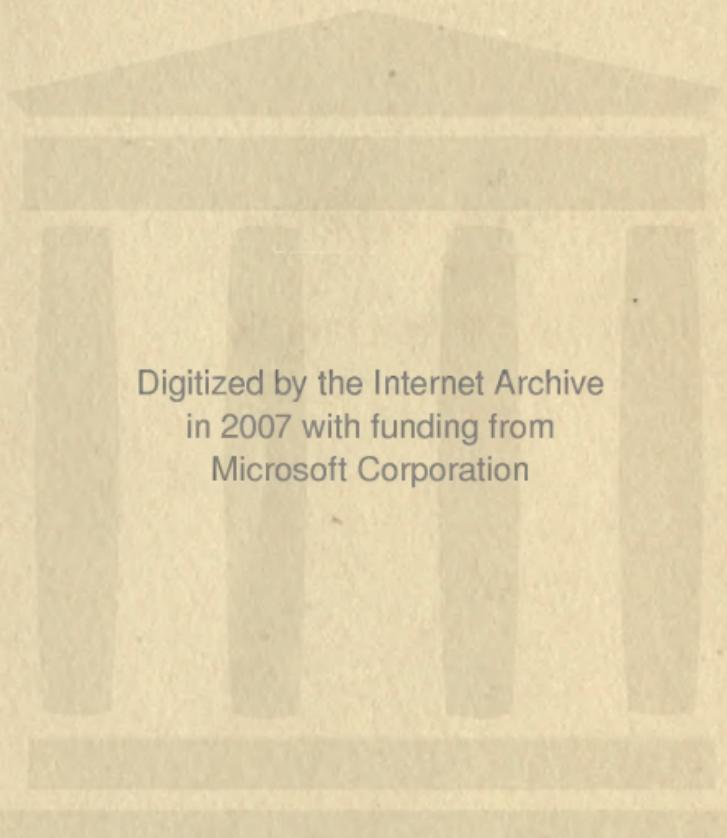
DESCRIPTION AND COMMENT BY
THEODORE MARBURG

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**DRAFT CONVENTION
FOR
LEAGUE OF NATIONS**



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THE MACMILLAN COMPANY
1918

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¹ In view of the fact that the work is composite in nature, no single person can be regarded as necessarily endorsing every detail of the tentative Convention.

FOREWORD

AFTER the Allies had formally and officially committed themselves — in their masterly reply to President Wilson January 10, 1917 — to the principle of a league of nations to discourage future wars, manifestly the next important step was to find out what kind of a league they would accept. Now, the most direct way in which to attack that problem is to frame an actual Draft Convention for their consideration. With this object in view a private Study Group, composed of American jurists and publicists, examined the subject at ten meetings of the principal committee, supplemented by serious study by sub-committees, through the period of a year. It is thought useful to give out the results of their labours at this time. The Draft Convention is based on the program of the League to Enforce Peace, the principal aim of which is to compel inquiry before nations are allowed to go to war. The States of the League agree to make

FOREWORD

war, swift and immediate, on any nation which violates this fundamental provision.¹

¹ It will be noted that the tentative Draft Convention, which had its origin in a sketch submitted by George Grafton Wilson, has undergone considerable development and change since the author was privileged to give a description of it in his book "League of Nations."

DESCRIPTION AND COMMENT

DRAFT CONVENTION

DESCRIPTION AND COMMENT¹

MINISTRY

THE chief executive organ of the League is a Ministry of five, appointed out of, and by, an International Council and responsible to, and removable by, the Council. The executive powers of the Council are vested in this Ministry, which shall, in fact, possess all the powers of the Council when the latter is not in session, save one, namely, the power to make laws for the League. The Ministry is to keep a close watch on international developments with a view to forestalling difficulties. While having no power to interfere in the internal affairs of a State, it may offer its own services or those of any tribunal of the League in order to prevent internal disturbances from leading to international complications. It may itself entertain complaints or initiate investigations or may

¹ Reprinted from the *Journal of the Society of Comparative Legislation*, London.

pass up questions to the Council or the Court, or to any of the existing institutions at The Hague, provided that the parties to the dispute, if they so elect, may themselves designate the tribunal to which the dispute is to be referred.

It will be observed that there is no idea of ignoring the existing institutions at The Hague, so highly useful. On the contrary, the League will lean upon them as much as possible and co-operate in developing them.

Permanent session is prescribed for the Ministry. This means that we shall have sitting constantly at The Hague five men, presumably of international reputation — preferably men who have held important office — always in intimate contact and conference, keeping close watch on international developments, and ready at all times to act on a moment's notice. They would necessarily acquire an exceptional knowledge of international conditions and would speak with authority. Who can measure the far-reaching results of such an institution?

When, on the recommendation of the International Council, the use of military force shall have been determined by fa-

vourable action on the part of the States of the League known as the Great Powers, the Ministry shall proceed to appoint a War Council and take such other steps as are necessary to carry into execution the provisions of the treaty.

INTERNATIONAL COURT

When it was suggested to home and foreign jurists that a Court on the lines of the Court of Arbitral Justice, accepted in principle by the Second Hague Conference, was the institution required by the League, objection was made that the provisions in the Hague Convention were not broad enough and that the Court proposed in that convention would not meet the needs of the League. The question was accordingly gone into afresh with the result that a Court of larger powers is here planned.

The Court is to consist of fifteen judges, no two of whom "shall be connected with any one country either by birth, or as citizen or subject." But they may be taken from States without, as well as within, the League. They are to reside permanently at the seat of the

Court, which is fixed at The Hague, so that the world may have the benefit of the constant association of these men of kindred aims and duties. The appointments are for life, with retirement at the age of seventy on pension.

It will be remembered that the Hague Conference found it impossible to reach an agreement on the method of appointing the judges for the Court of Arbitral Justice. Agreement on the constitution of the Prize Court — a permanent judge to each of the eight Great Powers and only seven judges to represent by rota the remaining States, thirty-six in number, which participated in the Second Hague Conference — was made possible by the fact that the smaller States have insignificant mercantile marines and were not concerned over the questions likely to come before a Prize Court. When it came to the matter of the composition of a Court of Justice, however, the smaller States manifested a very lively interest and insisted on having each its own representative on the Court. This would have produced a Judicial Assembly instead of a Court and was manifestly impracticable.

The present Draft Convention endeavours to solve this difficult problem through the instrumentality of an Assembly of Judicial Electors. Each State of the League is entitled to three electors, appointed in such manner as it may determine. They are to meet at The Hague on a given day after nine Powers have ratified the convention and shall proceed to elect the judges of the Court from among candidates nominated either by the electors themselves or by the States of the League. A preferential system of voting may be established; if not, the voting shall be by absolute majority rule.

On this subject it may be said that while the Great Powers, having more at stake, are much more concerned with the successful and impartial functioning of the Court than the smaller Powers, there is no reason why the Court, chosen in the manner indicated, should not prove highly successful and therefore satisfactory to the Great Powers. This system, it will be noted, avoids direct appointment. And impartiality of decisions is further favoured by the provision that no judge shall sit in a matter "in

which a State whereof he is a native or citizen or subject is a litigant."

The competence of the Court extends to disputes of a justiciable nature arising between States whether or not members of the League, to disputes between corporations or individuals on the one side and States on the other, and even to disputes between corporations and individuals provided the dispute is of international consequence. It is for the Court itself to determine whether a dispute brought before it is justiciable.

"The doctrines of law recognized and applied by the International Court shall be those which in or under future conventions may be provided by the States of the League or those which may be agreed upon by the very litigants; and in the absence of such general provision or special agreement the Court shall follow its own theory of justice except in so far as doctrines have been established by general international law or have been embodied in the Hague Convention of 1907."

Provision is made for written decrees, accompanied by written opinions, which shall specify "what judges agree with

it, what judges concur in the decree on other grounds, and what judges dissent."

One of the most far-reaching and potent powers granted the Court is that of injunction. The Court is the only organ of the League which can actually issue such injunction, though it shall issue it not only of its own motion but also, for reason, on application of one of two other organs of the League, namely, the Council of Conciliation or the Ministry. And these latter may apply for it in connection with matters pending before any international tribunal even though these tribunals be not organs of the League. Thus, in cases before the Permanent Court of Arbitration at The Hague, before the International Commission of Inquiry, or before an arbitration specially instituted, the States of the League may secure themselves, pending the inquiry, against continuing injury or possible future injury which would be irreparable or which would impair the value of the tribunal's prospective decision. Such a provision does not impair the principle that the States of the League can bind only them-

selves by the agreement because, while the injunction extends to tribunals other than their own, it applies only to States of the League, which manifestly may provide by treaty any rules which they see fit to provide. This power of injunction will prove even more valuable in non-justiciable cases than in cases which are within the jurisdiction of the Court, for it is the former class of cases, namely, conflicts of political policy, which give rise to war. Such conflicts often involve momentous issues, pending inquiry into which a country would want to be made secure against continuing and possibly irreparable injury.

INTERNATIONAL COUNCIL

The International Council is to consist of three members from each of the Great Powers that may become States of the League and one member from each of the secondary Powers. They are to be the direct representatives of the appointing State and recallable at its pleasure. It is presumed that they will be in close contact with the Foreign Office of the appointing State, in order both to keep it informed and, themselves,

to receive instructions from it. The unanimity rule which obtained in the Hague Conferences is abandoned; resolutions of the Council are by absolute majority. It shall institute a secretarial bureau and appoint a secretary to be known as the secretary of the League, and "shall institute such other departments and appoint such other officers and assistants as may be necessary to conduct the business of the League and shall fix their salaries."

An important duty of the Council is that of examining "social, economic, and other conditions affecting international relations" and of making annual reports and recommendations thereon. It shall make rules for the functioning of the League just as a department of the Government makes rules under the statute law and under the Constitution. It shall also, by two-thirds majority, both make laws for the States of the League and recommend changes in the Constitution of the League provided that such laws and constitutional changes shall be binding on a State of the League only in case it has not signified its dissent within the period of a year.

It is felt that the world is not ready for a super-State, that the impairment of sovereignty which the League sets up must not extend to the point actually of empowering a central body to make laws for the League without giving each State the right to veto them. When, under the system existing at present, an international convention is agreed upon by the Powers, it becomes operative, as is well known, only against the States which may ratify it. The situation under the proposed League would be analogous though not identical. The laws enacted by the International Council would be operative only as against the States which may have failed to signify their dissent within the period specified.

The International Council has power to declare when conditions have arisen which call for the use of force by the League, each State thereafter determining for itself whether or not it will live up to its obligations under the treaty and proceed either to declare war on the recalcitrant member or, in the case of a minor incident, to furnish its quota to an international force without the for-

mality of a declaration of war. Some publicists hold that a central organ of the League should have power actually to declare war in the name of the League so as to insure prompt action. The difficulty encountered in trying to meet this suggestion was the constitutional provision of certain countries that the Legislature alone may declare war.

It is, however, a serious question whether this power to declare that the conditions have arisen calling for the use of force against a recalcitrant member should remain with the Council, composed of a relatively large number of men and therefore slower to act, or whether it should be lodged in the Ministry.

The argument for placing it with the Ministry is that war, once begun in earnest, is hard to stop and that swift and immediate action is required in order to prevent untoward incidents from flaming up into actual war. It is urged further that what is desired is not only swift action but the previous assurance of swift action as well, so that a nation inclined to aggression may not be disposed to take the chances of delay and

possible disagreement of the central organ of the League and so be led to proceed with its aggressive plans.

It is argued, on the other hand, that the consent of each State of the League to the proposed war measure will be more readily secured if the question has been considered and passed upon by the International Council, embracing representatives of all the States of the League, that each State will be more reconciled to a decision in which its own representative has participated, and that final action will therefore be equally swift. These arguments should be carefully weighed. The power in question, it must be remembered, is only recommendatory: not the power to declare war, but simply to make a statement of fact — the fact that a State of the League has committed acts of hostility against a fellow signatory. But it involves momentous consequences which touch the basic idea of the League. The lodgment of the function in the proper quarter is therefore of the highest importance.

Another power conferred on the Council is that of calling periodic international conferences "to formulate and

codify rules of international law and to recommend to them desirable measures."

It is safe to infer that laws made by the International Council and accepted by the States of the League will in time become law for the world because the important States of the world will be members of the League and the influence of their example, if nothing else, will tend to bring about this result. But at the same time it is only fair that in the making of laws, which are to be immediately or ultimately laws for the world, all the world should be allowed to participate. In order to meet this need, the Draft Convention, as we shall see, likewise sets up international conferences to which practically all States, whether or not members of the League, are to be admitted and which shall be charged with the duty of codifying and developing international law.

The International Council is also charged with the duty of appointing the Ministry, which is its executive committee.

COUNCIL OF CONCILIATION

The important function of conciliation is to be dealt with by a section of the International Council known as the Council of Conciliation. This section is not appointed by the Council itself: the individual States, in appointing members to the International Council, each designate one member as the member for conciliation. This of course makes a very large Council of Conciliation but it offers the advantage of enabling the members to group themselves in sections and it is not presumed that they will all act at one time. In fact, it is necessary that the bulk of them should be left free for the general work of the International Council since the minor Powers each send only one representative to the International Council and all of their representatives are therefore, at the same time, members for conciliation. This may seem a crude arrangement, but it has an object, namely, that the Council of Conciliation itself may be of changing, instead of fixed, personnel.

Now, a Court, passing upon questions

of law and equity, ought to be of fixed personnel. Its principal duty is to interpret and apply the law and accepted practices. Permanent composition is desirable in order to insure proper familiarity with the law and continuity of decisions. Such a Court, if composed of the right men, would only grow in prestige and influence from year to year.

Conciliation, on the other hand, is based on the principle of compromise, which leaves one or both parties to the controversy with a sense that they have not gotten all that was due them. One can therefore well understand how, when a dispute arises, a nation may object to the presence of an individual who has sat in a previous case in which it or its friends may have failed to secure all that was contended for. A fluctuating personnel on the part of the Council of Conciliation may therefore not be a disadvantage.

The function of the Council of Conciliation is of course to hear and pass upon non-justiciable questions. It may secure, through the Court, an injunction in connection with proceedings be-

fore it. As indicated, it has power to institute sections of its own members, and the recommendation of such a section "shall be the recommendation of the Council of Conciliation unless a litigant dissents," in which latter case the question shall be heard by the full Council. The Council is required to make and file recommendations and opinions.

GENERAL PROVISIONS

The seat of both the International Court and the International Council are to be at The Hague and their members shall enjoy diplomatic privileges. They are forbidden to hold other office or to engage in business or to receive any compensation other than their salaries. Both bodies, their committees, and sections, "shall have power to make requisition upon States of the League for information and to call upon them to secure the attendance of witnesses." They can also summon a State of the League to appear and answer a complaint. Their recommendations and decisions must be made within one year from the time the question is submitted,

unless the parties, by agreement, extend the time.

The States of the League will share the expenses of the International Council and the International Court in proportion to social income. No costs, recording or other fees, may be levied against a litigant either by the Council or the Court. The object of this is to induce all the world to make use of these institutions. It is presumed that the backward nations will not be admitted to the League and will therefore have no representatives on the Council of Conciliation. Disputes arising between them or over them are, however, costly to other Powers and not infrequently a source of war between other Powers. It is therefore desirable that they should be induced to bring their disputes of a non-justiciable nature before the Council of Conciliation, and the League should be quite willing to incur the expense thereof in the general interest.

In the organization of the International Court, however, all nations may participate and it might seem unfair to permit them to bring their cases before it without exercising that right and shar-

ing its expenses. But here again expediency would dictate a liberal policy toward non-members, it being presumed that a sense of right will in time lead nations which use the Court to adhere to the convention and share in the expenses of the institution.

INTERNATIONAL CONFERENCES

In addition to the International Council which, it will be remembered, has power to make binding rules for the League and to make laws *ad referendum* for the States of the League, it is desirable that there should be an international body to codify and develop international law and to which, therefore, practically all the nations of the world should be admitted. The acts of this body, like the acts of the International Council, are made subject to veto within the period of one year by the States participating in it.

To convey the impression that this or any other body has a right to make binding law for the world would be harmful, and it is therefore desirable to avoid the use of the term "legislature." The in-

stitution has accordingly been given the conservative name of "International Conference." At present it is connected with the League by a very thin thread: it is called and dissolved by the League.

In the beginning it will simply carry on the work of the Hague Conferences and of the Interparliamentary Union. Its usefulness and consequently its powers should, however, increase until, in course of time, it becomes a real and important organ of the League.

TEXT OF DRAFT CONVENTION¹

¹ The Draft Convention was laid before the New York Bar Association at its annual meeting on January 11, 1918, by Everett P. Wheeler, was described in the *New York Times* of the following day, and was printed in full in the *Independent* (New York) January 26, 1918.

ARTICLE I

COVENANT

SEC. 1. The high contracting parties, being the undersigned States and the States becoming parties to this Convention, hereinafter called the States of the League, agree that all disputes between them of every nature whatsoever, which diplomacy or existing and future treaties and institutions for mediation, inquiry or arbitration other than those of the League shall have failed to adjust, shall be submitted to the International Court, to be constituted in the manner prescribed in Article III of this Convention, for decision, if the question is justiciable in nature; or to the Council of Conciliation, to be constituted in the manner prescribed in Article II of this Convention, for recommendation, if the question is non-justiciable in nature.

SEC. 2. The high contracting parties agree not to declare war or begin hostilities against another State of the League

until any question in dispute has been submitted for inquiry and hearing and until the decision of the Court or the recommendation of the Council shall have been made, or until the time for making such decision or recommendation as provided in this Convention shall have elapsed, or if the decision of the Court or the recommendation of the Council, as the case may be, shall have been made within said time, then until six months shall have elapsed after the making of such decision or recommendation.

SEC. 3. The high contracting parties agree to use their economic and military forces against any State of the League that declares war or begins hostilities in violation of this Convention.

SEC. 4. The high contracting parties agree to co-operate in the promotion of friendly relations between States and, with this object in view, to call, at least once in every five years, International Conferences to formulate and develop international law.

ARTICLE II

INTERNATIONAL COUNCIL¹

SEC. 5. The International Council shall be constituted of members chosen by each State of the League in such manner as each State shall determine, to hold office during the pleasure of the appointing State, provided that each of the States now known as the Great Powers, viz., Austria-Hungary, British Empire, France, Germany, Italy, Japan, Russia and the United States, which shall become a State of the League, shall be entitled to three members and each of the other States of the League shall be entitled to one member.

SEC. 6. The International Council shall always be complete and in being. When a vacancy occurs in the representation of any State of the League such State shall take the necessary steps to cause the vacancy to be filled.

SEC. 7. The International Council

¹ The draft for the International Council, elaborated after the article relating to the Court had been framed, was drawn by a committee consisting of William H. Wadham, George Louis Beer, Hamilton Holt, and Robert Goldsmith.

shall be the judge of the right of any member to take his seat in the International Council.

SEC. 8. The International Council shall choose from its members a president and other officers.

SEC. 9. A majority of the members of the International Council shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent members in such manner and under such penalties as the International Council may prescribe.

SEC. 10. The International Council may determine the rules of its proceedings.

SEC. 11. Members of the International Council shall each receive an annual salary, to be determined by the International Council, of not less than twenty-five thousand dollars, excepting that the members of the Ministry and the members designated for conciliation shall receive such additional sum as the International Council may determine.

SEC. 12. The first meeting of the International Council shall be held at The Hague at noon on the first Monday of

the sixth month after nine States, of which at least four shall be Great Powers, have ratified this Convention and the International Council shall assemble annually thereafter on the first Monday in October, unless it shall appoint a different day.

SEC. 13. Resolutions of the International Council shall be passed only upon the concurrence of an absolute majority of all the members of the International Council.

SEC. 14. The International Council shall keep a record of the proceedings and debates and, from time to time, shall publish the same in an Official Journal, excepting such parts as may in its discretion require secrecy, and the Ayes and Nays of the members on any question shall, at the desire of one-fifth of those present, be entered on the Journal.

SEC. 15. The International Council shall institute a Secretarial Bureau and shall appoint a Secretary thereof, who shall be known as the Secretary of the League, and also shall institute such other Departments and appoint such other officers and assistants as may be necessary to conduct the business of

the League and shall fix their salaries.¹

SEC. 16. A question in dispute shall be deemed submitted when a written complaint shall have been filed with the Secretarial Bureau; a decision or recommendation shall be deemed to have been made when the same shall have been filed with the Secretarial Bureau.

SEC. 17. The International Council shall examine social, economic, political, and other conditions affecting international relations and shall make an annual report thereon, together with its recommendations, to the States of the League, and, from time to time, it shall also make such other reports and recommendations as it shall deem necessary and expedient.

SEC. 18. The International Council shall make rules for the functioning of the League.

SEC. 19. The International Council shall have power to propose measures which shall be the law as between the States of the League, and to recommend amendment of this Convention, upon the concurrence of two-thirds of all the mem-

¹ See "Amplification of the Covenant," Notes I and II in the Appendix.

bers of the International Council, provided that such measures and amendments shall become effective one year from the date thereof unless a State of the League signifies its dissent within said period.

SEC. 20. The International Council shall have power to determine that a State of the League has declared war, or begun hostilities, or committed other acts in violation of this Convention, and it shall forthwith notify this condition to the States of the League, which shall thereupon, each for itself, declare war upon the recalcitrant member, or in the case of a minor instance supply its military quota to the International Force.

SEC. 21. The International Council shall have the power to call periodic and special International Conferences to formulate and codify rules of international law, and shall furnish such Conferences such information and recommend for their consideration such measures as it shall deem necessary and expedient.

SEC. 22. The International Council shall have power to appoint or elect an Executive Committee, to be known as the Ministry, and other committees of its

own members, and also special committees which may or may not be composed exclusively of its own members.

MINISTRY

SEC. 23. The Ministry shall be constituted of five members of the International Council appointed or elected in such manner as the International Council may determine, provided that not more than one member shall be appointed or elected from any one State of the League.

SEC. 24. The Ministry shall choose its own presiding officer.

SEC. 25. The Ministry shall be in permanent session.

SEC. 26. The Ministry shall be responsible to and removable by the International Council.

SEC. 27. The executive powers of the International Council shall be vested in the Ministry.

SEC. 28. The Ministry shall possess all the powers of the International Council when the International Council is not in session, except the powers vested in the International Council in Sec. 19 of this Convention.

SEC. 29. The Ministry shall have power to entertain complaints or to initiate investigations, to hold preliminary hearings upon any question in dispute whether formally brought before it or not, to adjust the same if possible, and, on its own initiative, to file a complaint with the International Court, or with the Council of Conciliation, or with existing constitutions at The Hague; provided that parties to a dispute may by agreement designate the tribunal to which a question may be referred, and provided further, that if either party to a dispute files a claim that a question in dispute is justiciable said question shall be transmitted to the International Court.

SEC. 30. The Ministry, when in its opinion a situation has arisen likely to endanger peaceful relations between States, whether or not members of the League, shall report immediately to the International Council, or, if the International Council be not in session, shall report to the States of the League and call the International Council in special session.

SEC. 31. The Ministry, when the use

of military force shall have been determined by affirmative action on the part of the States of the League known as Great Powers, shall take such measures, including the appointment of a War Council, as may be necessary and expedient for carrying into execution the provisions of this Convention.

SEC. 32. The Ministry may apply to the International Court for an injunction to restrain a State of the League from committing objectionable acts pending a hearing and decision or recommendation upon a question in dispute before any international tribunal.

SEC. 33. The expenses of action taken pursuant to Sec. 3 of this Convention shall be borne by the States of the League in proportion to their respective social incomes, as determined by the International Council.

COUNCIL OF CONCILIATION

SEC. 34. The Council of Conciliation shall be constituted of one member of the International Council from each State of the League designated by the appointing State as the Member for Conciliation.

SEC. 35. The Council of Conciliation shall elect its own presiding officer.

SEC. 36. The Council of Conciliation shall have power to hear and make recommendations on non-justiciable questions, and upon such justiciable questions as may be referred to it by the Court, arising between States, whether or not States of the League or between a corporation or an individual on the one side and a State on the other, or between corporations or individuals; but if there be not at least one State on each side, there must be a certificate from the Foreign Office of the State of such corporation or individual to the effect that the question is of international consequence, with the exception, however, that no such certificate shall be required regarding a question arising in consequence of decisions of national courts involving foreigners.

SEC. 37. The Council of Conciliation may apply to the International Court for an injunction to restrain a State of the League from committing objectionable acts pending a hearing and recommendation upon a question in dispute before it.

SEC. 38. The Council of Conciliation may institute Sections of its members and may refer any question that it is authorized to hear to a Section for hearing and recommendation.

SEC. 39. The recommendation of a Section shall be the recommendation of the Council of Conciliation unless a litigant dissents, whereupon the question shall be heard and recommendation made by the Council of Conciliation.

SEC. 40. The recommendation upon questions heard by the entire Council of Conciliation shall be made by an absolute majority of all the members and, in the event of an equal division, the recommendation shall be reached by omitting the member from the State last adhering to this Convention.

SEC. 41. The recommendation upon questions heard by a section of the Council of Conciliation shall be made by an absolute majority of the members hearing the question.

SEC. 42. The Council of Conciliation shall, in each case submitted, make and file a recommendation together with an opinion giving a statement of the case

and the reasoning upon which the recommendation is based.

ARTICLE III

INTERNATIONAL COURT¹

SEC. 43. The International Court shall consist of fifteen judges.

SEC. 44. Not more than two of the judges shall be connected with any one country either by birth, or as citizen or subject; but with that exception the judges may be taken from any State whether or not a State of the League.

SEC. 45. The judges shall reside at the permanent seat of the Court.

SEC. 46. Each judge shall be appointed for life, save that on arriving at the age of seventy any judge may retire from active service with a pension as hereinafter provided, and save also that any judge, as hereinafter provided, may be displaced for cause stated and shown and further provided that the pension

¹ The article relating to the Court was originally drawn by a sub-committee consisting of Everett P. Wheeler, Eugene F. Wambaugh, George Grafton Wilson, and William C. Dennis.

shall not apply unless the judge has served for a period of ten years.

SEC. 47. The judges of the International Court shall be chosen by an assembly of judicial electors, provided however, that no judicial elector, while in service, shall be chosen as a judge.

SEC. 48. The judicial electors shall be appointed by the States of the League respectively in such way as each State may determine.

SEC. 49. Each of the States of the League is entitled to three judicial electors.

SEC. 50. The original judicial electors shall be appointed for terms respectively of three, six, and nine years; and electors appointed to fill vacancies shall be appointed for a term of nine years.

SEC. 51. The judicial electors shall meet at The Hague at noon on the first Monday of the fourth month after nine Powers have ratified this Convention.

SEC. 52. The judicial electors shall elect the original judges of the Court from among candidates nominated by any State of the League or by any judicial elector acting upon his own initiative.

SEC. 53. In balloting for judges one judgeship shall be filled at a time.

SEC. 54. Before entering upon his duties each member of the assembly of judicial electors shall aver upon his honour that the ballot he may cast is dictated by no personal interest and by no consideration for or against any person or country and by no agreement, however informal, with any person or country, but wholly by the elector's own earnest desire to select a learned and just judge.

SEC. 55. Each elector is entitled to one vote, but the assembly may establish a system of preferential voting whereby each elector may indicate his first, second, and third choices, and whereby greater weight shall attach to a first choice than to a second and greater weight to a second than to a third.

SEC. 56. Unless a preferential system of voting is adopted, no candidate shall be declared elected unless he receives an absolute majority of the votes cast for the persons who have been nominated in accordance with the provisions contained in this Convention, and for this

purpose blank ballots shall be wholly disregarded.

SEC. 57. The assembly of judicial electors shall remain in session until the membership of the Court has been completed by the election of a sufficient number of judges and by the acceptance of election.

SEC. 58. When the original Court has been completed the assembly of judicial electors shall adjourn, subject to call in such manner as it may provide.

SEC. 59. Whenever there is a vacancy in the Court it shall be filled by the judicial electors in such manner as they may determine.

SEC. 60. For cause stated and shown the assembly of judicial electors, by vote of an absolute majority of those present and voting, may displace any judge of the Court.

SEC. 61. An absolute majority of the judicial electors appointed shall constitute a quorum for all purposes, and a smaller number may adjourn from day to day.

SEC. 62. The Court shall be competent to decide not only disputes of a justiciable nature arising between States of

the League, but also disputes of a justiciable nature arising between States, whether or not States of the League, or between a corporation or an individual on the one side and a State on the other, or between corporations or individuals; but if there be not at least one State on each side, there must be a certificate from the Foreign Office of a State to the effect that the dispute is of international consequence, with the exception, however, that no such certificate shall be required regarding a dispute arising in consequence of decisions of national courts involving foreigners.

SEC. 63. The Court shall determine for itself whether a dispute is justiciable.

SEC. 64. Except as provided in this Convention, the Court shall make its own rules regarding pleading and procedure.

SEC. 65. Unless by agreement of the parties, no judge shall sit in any case in which he has a personal interest or with which he has dealt as counsel or as judge, or in which a State whereof he is a native or citizen or subject is a litigant, or in which a native or citizen or subject or corporation of such State is a litigant, or in which a litigant is a

State at war with a State whereof he is a native or citizen or subject, or in which a litigant is a native or citizen or subject or corporation of a State at war with a State whereof he is a native or citizen or subject.

SEC. 66. In every case as many judges as possible shall sit, and the number of judges sitting shall never be less than nine, except when there is agreement of the Court and the parties to the contrary, and except when judges are disqualified as hereinbefore provided.

SEC. 67. The doctrines of law recognized and applied by the International Court shall be those which in or under future conventions may be provided by the States of the League or those which may be agreed upon by the very litigants; and in the absence of such general provision or special agreement the Court shall follow its own theory of justice except in so far as doctrines have been established by general international law or have been embodied in the Hague Conventions of 1907.

SEC. 68. The ultimate decision shall be made by an absolute majority of the judges sitting in the case, but when these

judges divide equally the decision shall be reached by omitting the judge last elected.

SEC. 69. The ultimate decision shall be promulgated in a written decree, and the decision shall be accompanied by a written opinion giving a statement of the case and also the reasoning upon which the decision is based.

SEC. 70. The opinion shall bear the name of the judge by whom it is written.

SEC. 71. The opinion shall state what judges agree with it, what judges concur in the decree on other grounds, and what judges dissent from the decree.

SEC. 72. The salaries of the judges of the International Court shall be equal and shall not be less than fifty thousand dollars each.

SEC. 73. Upon retirement for age, as hereinbefore provided, a judge shall receive an annual pension equal to three-fifths his salary.

SEC. 74. The Court shall appoint its own clerks and other officials and fix their salaries.

SEC. 75. The Court shall have power to enjoin a State of the League from committing objectionable acts pending a

decision upon any question in dispute before it; injunction may also be issued by the Court on application of the Council of Conciliation or the Ministry. The injunction shall be supported by the economic or military forces, or both, of the States of the League.

ARTICLE IV

GENERAL PROVISIONS

SEC. 76. The permanent seat of the International Council and of the International Court shall be at The Hague.

SEC. 77. Members of the International Council and members of the International Court shall enjoy diplomatic privileges so long as they remain in active service.

SEC. 78. Before assuming office each member of the International Council and each member of the International Court shall make oath or affirmation to obey and support this Convention and to perform the duties of his office without fear or favour.

SEC. 79. Members of the International Council and members of the In-

ternational Court shall not hold any other office, or engage in any other business, or receive any compensation other than their salaries so long as they remain in active service.

SEC. 80. The International Council, its committees and sections, and the International Court, shall have power to make requisition upon States of the League for information and to call upon them to secure the attendance of witnesses.

SEC. 81. The Council of Conciliation and the International Court shall have power to summon a State of the League to appear and answer any complaint which has been filed.

SEC. 82. The recommendation of the Council of Conciliation and the decision of the International Court shall be made within one year from the time of the submission of the question in dispute, unless, by stipulation of the parties, the time be extended.

SEC. 83. There shall be no costs, recording or other fees, levied against a litigant before the Council of Conciliation or before the International Court.

SEC. 84. The expenses of maintain-

ing the International Council and the International Court shall be borne by the States of the League in proportion to their respective social incomes, as determined by the International Council.

ARTICLE V

INTERNATIONAL CONFERENCES

SEC. 85. There shall be International Conferences constituted of representatives from the States which were invited to the Second Hague Conference, and the duties of the Conference shall be to codify and develop international law.

SEC. 86. The International Council shall call and dissolve the Conferences.

SEC. 87. The basis of representation in the Conferences shall be units of population and commerce, and such other elements as the Conferences may determine.

SEC. 88. The acts of the Conferences shall be binding on each participant unless rejected by it within the period of one year after the adjournment of the Conference.

AMPLIFICATION OF THE COVENANT

NOTE I. Subject to regulations made by the International Council, the Secretarial Bureau shall take charge of and be responsible for the funds belonging to or in the custody of the International Council, the collection of all receipts due to the Council, and the making of all authorized payments; further, the Secretarial Bureau shall take charge of and be responsible for all complaints and other papers, books and other documents, belonging to or in the custody of the International Council; transmit all requisitions for information, summons, subpoenas, injunctions, recommendations and all other necessary communications on behalf of the International Council to States or individuals; keep an accurate record of the proceedings of the International Council and publish the Official Journal, all recommendations and opinions, and such other documents as the International Council may from time to time direct; make record of all papers filed and issued; make translations of the record of the proceedings of the International Council or a synopsis thereof,

recommendations, opinions and such other documents as the International Council may direct, and communicate them to the States of the League.

NOTE II. All formal complaints shall be filed with the Secretarial Bureau.

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THE END

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Author Marburg, Theodore (ed.)

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